

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RYAN C. FORD, a Minor, by and through his  
Guardian, GARY GOODEMOTE,  
8723 West Ridge Road  
Girard Township, PA 16417

No. 05-54 Erie

and

ROBERT FORD and MAE FORD,  
Individually,  
8723 West Ridge Road  
Girard Township, PA 16417

Plaintiffs,

v.

ICON HEALTH AND FITNESS, INC.,  
1550 South 100 West  
Logan, UT 84110

and

SEARS, ROEBUCK AND COMPANY,  
3333 Beverly Road  
Hoffman Estates, IL 60179

Defendants.

**DEFENDANTS' PRETRIAL STATEMENT**

Defendants, Icon Health & Fitness, Inc. ("Icon"), and Sears, Roebuck and Company ("Sears"), pursuant to the Federal Rules of Civil Procedure, Local Rule of Civil Procedure 16.1.4, and the Order of Court issued in this matter on May 5, 2006, files this Pretrial Statement, and in support thereof states as follows:

**I. Brief Statement of Material Facts to be Offered at Trial**

On or around January 11, 2005, Plaintiffs Ryan C. Ford (“Ryan”), a minor, through his Guardian, Gary Goodmote, and Ryan’s parents Robert and Mae Ford (“Mr. and Mrs. Ford”) filed their Civil Complaint (“Complaint”) against Defendants Icon and Sears. Plaintiffs’ Complaint alleges causes of action against each Defendant for Negligence, Strict Liability, Breach of Warranty and Negligent Infliction of Emotional Distress. The averments of the foregoing counts arise out of an alleged January 18, 2003 incident involving Ryan and a piece of exercise equipment known as the Pro-Form R 930 Space Saver Rider (the “Rider”) manufactured by Icon and sold by Sears to Mr. and Mrs. Ford. Specifically, the Complaint pleads that on January 18, 2003, the Rider allegedly “closed and locked” on Ryan while he was sitting on it. *Complaint*, ¶¶ 7-8. Paragraph 9 of the Complaint alleges that Ryan suffered “severe, serious and permanent injuries and permanent impairment of bodily functions.” *Complaint*, ¶ 9.

However, neither the medical records nor the testimony adduced in this case supports Plaintiffs’ claims for damages, either in severity or duration. Furthermore, there is record evidence which shows that certain of Ryan’s claimed injuries pre-existed the date of the alleged incident. Additionally, there is conflicting evidence as to what exactly occurred on January 18, 2003, and a dispute exists as to whether the Rider was involved at all.

Icon and Sears will also introduce evidence of Mr. and Mrs. Ford’s liability in this matter, as the Rider was equipped with a label which warned that children should *never* be permitted to play on or around the Rider. The Rider’s User’s Manual likewise contained the following warning: “Keep small children and pets away from the R-930 at

all times.” Finally, on or around July 14, 1997, Icon, in cooperation with the Consumer Products Safety Commission (the “CPSC”), issued a recall notice with respect to the Rider. The recall notice set forth a toll-free number for consumers to call for information concerning the recall, such as the cause of the recall, and how to obtain a free repair kit to remedy the mechanism of the recall. In this regard, Icon and Sears will prove that the Rider on which Ryan was allegedly injured at one time was equipped with the safety mechanism, but that it, along with the aforementioned caution decal, had been removed subsequent to the Rider’s purchase. Therefore, Icon and Sears deny the allegations of liability and damages against them.

**II. Statement of All Damages Claimed, Including the Amount and Calculation of All Economic Damages**

Plaintiffs allege that Ryan sustained the following damages:

- a. anoxic encephalopathy;
- b. traumatic asphyxia;
- c. chest wall compression;
- d. unconsciousness;
- e. cyanotic episode;
- f. upper chest contusion;
- g. hypoxic/ischemic brain injury;
- h. post-concussive syndrome;
- i. stridor;
- j. mild mental retardation;
- k. aggravation of attention deficit hyperactivity disorder;
- l. fatigue;
- m. nightmares;
- n. emotional problems of tantrum and aggression;
- o. learning difficulties, including speech articulation;
- p. anxiety;
- q. pavor nocturnus (night tremors)
- r. post-traumatic stress disorder;
- s. cognitive difficulties;
- t. variable/intermittent ptosis of eyelids; and
- u. shock to nerves and nervous system.

Plaintiffs allege that Ryan’s damages are in excess of \$30,000.00.

Mr. and Mrs. Ford allege that each sustained the following “emotional distress” damages: headaches, hysterical attacks, insomnia, severe depression, nightmares, stress, nervousness and anxiety. Mr. and Mrs. Ford each allege damages in excess of \$30,000.00.

Defendants have counterclaimed in this action, alleging that either Plaintiff Robert Ford, Plaintiff Mae Ford, or both, were present at or near the scene of the incident which allegedly took place on January 18, 2003, and that they had a duty to supervise Ryan C. Ford, and were negligent in not supervising Ryan C. Ford. Alternatively, Defendants have alleged that should Plaintiff Ryan C. Ford prove that he sustained injury and/or damages as alleged in Plaintiffs’ Complaint, then Plaintiffs Robert Ford and Mae Ford are directly liable to the Minor Plaintiff, Ryan C. Ford, for any such injury and damage and/or are liable over to these Defendants for indemnity and/or contribution to be determined at this matter’s trial.

**III. Name, Address and Telephone Number of Each Witness**

a. Witnesses which Defendants expect to present:

Liability:

1. Gary Goodemote  
3602 Scarboro Road  
Erie, PA 16506
2. Robert Ford  
8723 West Ridge Road  
Erie, PA 16417
3. Ryan C. Ford  
8723 West Ridge Road  
Erie, PA 16417
4. Mae Ford  
8723 West Ridge Road  
Erie, PA 16417
5. Dr. Howard P. Medoff, Ph.D., P.E.  
1600 Woodland Road  
Abington, PA 19001

Liability – Experts:

6. Laurel Jensen  
c/o Icon Health and Fitness, Inc.

1500 S. 1000 W.  
Logan, UT 84321  
Mr. Jensen's curriculum vitae and report are attached.

Liability – Other:

7. Any persons identified as witnesses (liability and/or damages) by Plaintiffs in Plaintiffs' Pretrial Statements and/or which Plaintiffs call at the time of trial.

Damages:

1. Gary Goodemote  
3602 Scarboro Road  
Erie, PA 16506
2. Robert Ford  
8723 West Ridge Road  
Erie, PA 16417
3. Ryan C. Ford  
8723 West Ridge Road  
Erie, PA 16417
4. Mae Ford  
8723 West Ridge Road  
Erie, PA 16417
5. Mary Kay Borkowski  
c/o Girard School District  
1100 Rice Avenue,  
Girard PA 16417
6. Barbara Gaines, M.D.  
3705 Fifth Avenue  
Pittsburgh, PA 15214
7. Medical Records Custodian of  
Barbara Gaines, M.D.  
3705 Fifth Avenue  
Pittsburgh, PA 15214
8. Robert E. Wilson, M.D., Ph.D.  
1910 Sassafras Street  
Erie, PA 16502

9. Medical Records Custodian of  
Robert E. Wilson, M.D., Ph.D.  
1910 Sassafras Street  
Erie, PA 16502
10. Christine Brown, M.D.  
1700 Peach Street  
Suite 200  
Erie, PA 16501
11. Medical Records Custodian of  
Christine Brown, M.D.  
1700 Peach Street  
Suite 200  
Erie, PA 16501
12. Mitchell Humphrey, M.D.  
7287 Main Street  
Fairview, PA 16415
13. Medical Records Custodian of  
Mitchell Humphrey, M.D.  
7287 Main Street  
Fairview, PA 16415
14. Peter M. Intrieri, M.D.  
c/o Hamot Medical Center  
201 State Street  
Erie, PA 16550
15. Medical Records Custodian of  
Peter M. Intrieri, M.D.  
c/o Hamot Medical Center  
201 State Street  
Erie, PA 16550
16. Representative from  
Hamot Medical Center  
201 State Street  
Erie, PA 16550
17. Medical Records Custodian of  
Representative from Hamot Medical Center  
201 State Street  
Erie, PA 16550

18. Representative from  
Children's Hospital of Pittsburgh  
3705 Fifth Avenue  
Pittsburgh, PA 15213
19. Medical Records Custodian of  
Representative from  
Children's Hospital of Pittsburgh  
3705 Fifth Avenue  
Pittsburgh, PA 15213
20. Representative from  
Shriner's Hospital  
1645 West 8<sup>th</sup> Street  
Erie, PA 16505
21. Medical Records Custodian of  
Representative from  
Shriner's Hospital  
1645 West 8<sup>th</sup> Street  
Erie, PA 16505
22. Representative from  
Gertrude A. Barber Center  
100 Barber Place  
Erie, PA 16507
23. Records Custodian of  
Representative from  
Gertrude A. Barber Center  
100 Barber Place  
Erie, PA 16507
24. Representative from  
Achievement Center  
101 East Sixth Street  
Erie, PA 16507
25. Records Custodian of  
Representative from  
Achievement Center  
101 East Sixth Street  
Erie, PA 16507

26. Representative from  
Community Integration, Inc.  
1330 West 26<sup>th</sup> Street  
Erie, PA 16508
27. Records Custodian of  
Representative from  
Community Integration, Inc.  
1330 West 26<sup>th</sup> Street  
Erie, PA 16508
28. Representative from  
Northwest Tri-County Intermediate Unit #5  
252 Waterford Street  
Edinboro, PA 16412
29. Records Custodian of  
Representative from  
Northwest Tri-County Intermediate Unit #5  
252 Waterford Street  
Edinboro, PA 16412
30. Representative from  
Elk Valley Elementary School  
2556 Maple Avenue  
Lake City, PA 16423
31. Records Custodian of  
Representative from  
Elk Valley Elementary School  
2556 Maple Avenue  
Lake City, PA 16423
32. Representative from  
Girard School District  
1100 Rice Avenue  
Girard, PA 16417
33. Records Custodian of  
Representative from  
Girard School District  
1100 Rice Avenue  
Girard, PA 16417



34. Representative from  
Pediatric Ophthalmology of Erie  
2201 West 38<sup>th</sup> Street  
Erie, PA 16506
35. Medical Records Custodian of  
Representative from  
Pediatric Ophthalmology of Erie  
2201 West 38<sup>th</sup> Street  
Erie, PA 16506
36. Representative from  
Northshore Clinical Associates  
120 East Second Street  
Erie, PA 16507
37. Medical Records Custodian of  
Representative from  
Northshore Clinical Associates  
120 East Second Street  
Erie, PA 16507
38. Representative from  
West County Paramedics  
6852 Meadville Road  
Girard, PA 16417
39. Medical Records Custodian of  
Representative from  
West County Paramedics  
6852 Meadville Road  
Girard, PA 16417
40. Celeste Siebold, MA Psychologist  
1369 West 6<sup>th</sup> Street  
Erie, PA 16505
41. Medical Records Custodian of  
Celeste Siebold, MA Psychologist  
1369 West 6<sup>th</sup> Street  
Erie, PA 16505

## Damages – Experts:

42. Upon the Court's granting of Defendants' Motion for Leave to Conduct an Independent Medical Examination of Ryan C. Ford, Defendants will present the testimony of its medical expert who will conduct an independent medical examination of Ryan C. Ford.

## Damages – Other:

43. Any persons identified as witnesses (liability and/or damages) by Plaintiffs in Plaintiffs' Pretrial Statements and/or which Plaintiffs call at the time of trial.

- b. Witness which Icon may call if the need arises:

None at this time. Defendants reserve right to supplement this Pretrial Statement up to and including the time of trial in accordance with the Federal Rules of Civil Procedure and the local rules and/or practices and procedures of this Court.

**IV. Name of Each Witness Whose Testimony is Expected to be Presented by Means of Deposition**

At this time, Defendants are not planning on presenting any testimony by deposition, aside from that introduced by Plaintiffs. Defendants reserve the right to supplement this Pretrial Statement up to and including the time of trial in accordance with the Federal Rules of Civil Procedure and the local rules and/or practices and procedures of this Court.

**V. Exhibits**

- a. Those which Defendants expect to offer:

EXHIBIT	DATE	BATES NO.	DESCRIPTION
D1			The Rider
D2			Photographs of the Rider
D3	NO DATE	ICON 00138- 00149	User's Manual for Equipment

<b>EXHIBIT</b>	<b>DATE</b>	<b>BATES NO.</b>	<b>DESCRIPTION</b>
D4	NO DATE	ICON 00120- 00121	Important Assembly Update
D5	07/30/96	ICON 0034	Caution Decal Memo
D6	02/11/97	RYAN 00362	Hamot Medical Center - Birth Record of Ryan Ford
D7	02/20/97	RYAN 00365-00367	Hamot Medical Center - Neonatal Neurological Evaluation
D8	02/20/97	RYAN 00379-00381	Hamot Medical Center - Discharge Summary
D9	07/14/97	ICON 150	Recall Notice
D10	07/17/97	ICON 00108- 110	Newspaper articles regarding Recall
D11	Oct. 1997	RYAN 00553-00554	Erie County Early Intervention Service Coordination Family Profile
D12	11/23/99	IEP 00049- 00053	Individualized Education Program Comprehensive Evaluation Report (CER)
D13	01/25/00	RYAN 00609-611	Achievement Center - Early Intervention Progress Summary
D14	12/05/00	IEP 00034- 00038	Individualized Education Program Comprehensive Evaluation Report (CER)
D15	6/5/01	IEP 00023-35	Individualized Education Program – Review
D16	08/23/01	MAE 0001- 0002	Mae Ford Psychological Records

<b>EXHIBIT</b>	<b>DATE</b>	<b>BATES NO.</b>	<b>DESCRIPTION</b>
D17	12/04/01	IEP 00015-21	Individualized Education Program Re-evaluation of Ryan Ford.
D18	2002-2003	RYAN 00210	First Quarter Report Card for Kindergarten
D19	2002-2004	RYAN 00204	Attendance records
D20	2002-2004	ELK SCH 0103	Vision Screening record
D21	04/16/02	ELK SCH 0118	Elk Valley Elementary School Questionnaire.
D22	04/24/02	ELK SCH 0085 – 87	Elk Valley Elementary School Evaluation Report
D23	5/9/02	ELK SCH 0083-84	Individualized Education Program - Notice of Recommended Educational Placement
D24	5/9/02	RYAN 00205	Girard School District Progress Report for Kindergarten
D25	06/10/02	IEP 00002	Individualized Education Program
D26	08/02- 01/03	ELK SCH 0102	Progress notes
D27	11/22/02	ELK SCH 0072-80	Individualized Education Program evaluation
D28	11/22/02	ELK SCH 0055-56	Individualized Education Program - Notice of Recommended Educational Placement
D29	2003-2004	ELK SCH 0099	Ryan's attendance record for the 2003-2004 school year
D30	2003-2004	ELK SCH	Ryan's Kindergarten Check List/Report

<b>EXHIBIT</b>	<b>DATE</b>	<b>BATES NO.</b>	<b>DESCRIPTION</b>
		0093	Card
D31	01/20/03	RYAN 00088-00090	Children's Hospital of Pittsburgh Pediatric Critical Care Medicine & Patient Progress Note
D32	01/21/03	ELK SCH 0106	Elk Valley Elementary School: Email correspondence from "b. horn" to a variety of individuals
D33	01/21/03	RYAN 00195 - 201	Children's Hospital of Pittsburgh In-Patient Discharge Summary
D34	01/24/03	RYAN 00065	Healthy Families Primary Care Progress Note
D35	02/07/03	RYAN 00087	Children's Hospital of Pittsburgh Pediatric Surgery Evaluation
D36	02/10/03	MAE 0018 - 0020	Mae Ford Psychological Records
D37	2/11/03	ELK SCH 0052-53	Individualized Education Program - Notice of Recommended Educational Placement
D38	03/03/03	RYAN 00067	Healthy Families Primary Care Progress Note
D39	04/28/03	MAE 0021	Mae Ford Psychological Records
D40	5/20/03	ELK SCH 0059-71	Individualized Education Program – Review
D41	05/28/03	SHRIN HOSP 00003 - 4	Shriner's Hospital for Crippled History and Physical evaluation
D42	07/08/03	RYAN 00059	Pediatric Ophthalmology of Erie

<b>EXHIBIT</b>	<b>DATE</b>	<b>BATES NO.</b>	<b>DESCRIPTION</b>
D43	8/6/03	RYAN 00271-272	Individualized Education Program - Notice of Recommended Educational Placement
D44	09/10/03	BARBER 0002-0008	Erie County Wrap Around (Gertrude A. Barber Clinic)
D45	09/16/03	COM INT 0006-0007	Community Integration, Inc. (Initial Psychiatric Evaluation)
D46	2004-2005	ELK SCH 0092 – 93	Ryan's first grade report card
D47	2004-2005	ELK SCH 0098	Ryan's Attendance Summary for 1 <sup>st</sup> Grade
D48	10/6/04	ELK SCH 0021-25	Individualized Education Program - Notice of Recommended Educational Placement
D49	10/19/04	RYAN 00542-00544	Northshore Clinical Associates, LLC letter to Dr. Humphrey
D50	02/24/05	RYAN 00535	Pediatric Ophthalmology of Erie
D51	07/11/05	RYAN 00515 – 525	Hamot Medical Center - Emergency Room History & Physical
D52	10/6/05	ELK SCH 0003-12	Individualized Education Program - Review
D53			Deposition Transcript of Gary Goodemote, Ryan Ford's Guardian
D54			Deposition Transcript of Mae Ford
D55			Deposition Transcript of Robert Ford

EXHIBIT	DATE	BATES NO.	DESCRIPTION
D56			Deposition Transcript of Laurel Jensen
D57			Deposition Transcript of Mary Kay Borkowski
			Any other deposition testimony as the record develops (Plaintiff Ryan Ford's Pretrial Statement states that Plaintiff is planning on taking the videotaped deposition of various individuals to be used at trial). <i>Plaintiff Ryan Ford's Pretrial Statement</i> , 4.
			Any and all exhibits which Plaintiffs identified in their respective Pretrial Statements and which Plaintiffs introduce at the time of trial.
			Any other records which are produced by Plaintiff Mae Ford as the record develops ( <i>see</i> Plaintiff Mae Ford's Pretrial Statement at paragraph 5).
			Any and all pleadings filed of record
			Any and all written discovery requests and/or responses

At this time, there is no disagreement or agreement as to the authenticity and admissibility of the foregoing exhibits. Defendants reserve the right to supplement this Pretrial Statement up to and including the time of trial in accordance with the Federal Rules of Civil Procedure and local rules and/or practices and procedures of this Court.

b. Those which Defendants may offer if the need arises:

None at this time. Defendants reserve the right to supplement this Pretrial Statement up to and including the time of trial in accordance with the Federal

Rules of Civil Procedure and the local rules and/or practices and procedures of this Court.

**VI. Legal Issues**

Plaintiffs have raised claims of negligence, strict liability, breach of warranty and intentional infliction of emotional distress. Defendants have counterclaimed for negligent supervision.

**VII. Expert Disclosures**

a. Liability:

Laurel Jensen  
c/o Icon Health and Fitness, Inc.  
1500 S. 1000 W.  
Logan, UT 84321  
(Please see attached Report and CV)

b. Damages:

Icon is seeking to conduct an IME of Ryan Ford and Icon will supplement this Pretrial Statement accordingly.

**VIII. Reports containing findings or conclusions of who have treated, examined, or have been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of this case**

Please see above.



**IX. Amendment**

Icon reserves the right to supplement this Pretrial Statement in accordance with the Federal Rules of Civil Procedure, the local rules of this Court and/or as new evidence is discovered in this case.

Respectfully submitted,

PICADIO SNEATH MILLER & NORTON

/s/ *Henry S. Sneath*

Henry M. Sneath, Esquire

Pa. I.D. No. 40559

Shannon M. Clougherty

Pa. I.D. No. 88586

4710 USX Tower, 600 Grant Street

Pittsburgh, PA 15219-2702

Phone: (412) 288-4000

Counsel for Defendant

Icon Health & Fitness, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Defendant's Pretrial Statement has been served upon all parties either individually or through counsel by:

_____	Hand-Delivery
_____	Facsimile
_____	First Class, US Mail, Postage Prepaid
_____	Certified Mail-Return Receipt Requested
<u>  X  </u>	CM/ECF Notice of Filing

at the following addresses:

Michael J. Koehler, Esquire  
Nicholas, Perot, Smith, Koehler & Wall  
2527 West 26<sup>th</sup> Street  
Erie, PA 16506  
(Co-Counsel for Plaintiff)

Christina S. Nacopoulos, Esquire  
1001 State Street  
Suite 1400  
Erie, PA 16501  
(Co-Counsel for Plaintiff)

/s/ *Henry S. Sneath*

Henry M. Sneath, Esquire  
Shannon M. Clougherty, Esquire  
Counsel for Defendants

Date: September 14, 2006